

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3752 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KAMLABEN KHUSHALDAS KHILONANI & ORS.

Versus

COMMISSIONER, BARODA MUNICIPAL CORPORATION

Appearance:

MR AD MITHANI for Petitioners

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/10/96

ORAL JUDGMENT

Heard learned counsel for the petitioners. The petitioners are the cabin holders for last more than 20 years in the city of Baroda. Many other hawkers and cabin holders in the city of Baroda have approached to the Apex Court and decision given in those matters has been filed by the petitioners as annexure 'D'. The Apex Court, under the order annexure 'D', has disposed of the petitions in the following terms:

"1. The Petitioners/Appellants undertake to this Court that they shall remove their hand-carts and/or gallas, Cabins, etc. on or before December 31, 1986. However, this undertaking by the appellants/petitioners will be subject to clause (2) below. Such undertakings should mention the exact places of their present trading. The undertakings to be filed by July 14, 1986.

2. The appellants/petitioners, however, will be at liberty to adopt appropriate proceedings in respect of locations of the area or the places in the trading zones where the appellants/petitioners and other hawkers will be permitted to carry on their trade in the Final Scheme.

3. The Municipal Corporation of Baroda shall give an opportunity to the appellants/petitioners to make their representations and will take them into consideration when it fixed hawking and non-hawking zones, in the Final Scheme.

4. The Municipal Corporation, Baroda, should fix such zones expeditiously and in any case on or before December 15, 1986.

5. The Interim Scheme as approved by the Surat cases in clause (5) of the Surat matters may be implemented subject to the modification that clause (4) of the Baroda interim scheme shall be deleted."

2. The petitioners have approached this Court and prayed for directions to the respondent-Corporation to extend benefits of the order dated 2nd May 1986, subject to same terms and conditions to the petitioners also. The petitioners filed undertaking in the identical manner as it was given by the persons who were party before the Apex Court. This undertaking has been ordered to be taken on record by this Court on 9th July 1986.

3. Taking into consideration totality of the facts of the case, interest of justice will be met in case this writ petition is disposed of with the directions to the respondent to consider whether the case of the petitioners is identical to the cases of the persons who were parties before the Apex Court or not. In case the Corporation considers that the cases of the petitioners are identical to the cases of the persons who were parties before the Apex Court in the matter which has

been decided under the order annexure 'D', then same benefits which have been given to those persons under the aforesaid order may also be extended to the petitioners on same terms and conditions on which such benefits have been given to the persons who were parties before the Apex Court. However, in case the case of the petitioners are distinguishable from those persons, then the Corporation shall record reasons and pass a reasoned order and a copy of the same may be sent to the petitioners. Interim relief which has been granted by this Court shall continue till the matter is considered and decided by the Corporation. The petitioners shall make representation in this respect to the Corporation with all necessary documents within a period of two months from today. The petitioners shall make individual representation. The respondent-Corporation shall decide the same within a period of three months next thereafter. Till then, the interim relief shall continue. However, in case the Corporation decides the matter against the petitioners then the interim relief granted by this Court shall remain in force for next two months and in the meanwhile the petitioners after serving notice to the Corporation if required, shall approach the Civil Court and not this Court by way of Special Civil Application for redressal of grievances against the order made. Rule stands disposed of accordingly. No order as to costs.

.....

(sunil)